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MARRIAGE  
WITH A DECEASED WIFE'S SISTER.

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SPEECH

OF THE

RIGHT HON. LORD O'HAGAN,

LORD HIGH CHANCELLOR OF IRELAND,

IN THE

HOUSE OF LORDS, THURSDAY, MARCH 13, 1873,

ON THE

SECOND READING OF THE ABOVE BILL.

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LONDON :  
THE MARRIAGE LAW DEFENCE ASSOCIATION,  
25, PARLIAMENT STREET, S.W.

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1873.

# SPEECH

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LORD O'HAGAN said :—My Lords, if the operation of the Bill, submitted for the approval of your Lordships, had been confined to England or to Great Britain, I should have preferred to give a silent vote on this occasion. I cannot pretend to understand the moral condition or the social exigencies of this great country as well as those whom I address, and I should have been content to listen to the teachings of their larger experience and more accurate knowledge. But the Bill extends to Ireland, with which I am better acquainted,—which has not asked for it, and does not want it,—and where, I am satisfied, the majority of the people dislike its principle, and would repel its operation. I have formed a strong opinion on the question, and I desire to express it briefly.

In common with my noble friend\* who originated this discussion, in a very temperate and graceful speech, I have the sincerest sympathy with any innocent persons who suffer from the law as it exists. From some of them I have received communications which have touched me deeply. But I cannot pity those by whom that law has been deliberately violated, on the prompting of passion or in concession to a supposed expediency,—without consideration of the fatal results to trusting women and unborn children. If it were possible to relieve in cases of real hardship, with due regard to the momentous issues involved in the controversy, I suppose we should all be glad to aid in doing so; but we have to consider what is right and wise, and for the highest interests of the society in which we live. We cannot play with

\* Lord Houghton.

them according to the impulse of our feelings. We are bound to deal with them as judgment and conscience dictate when we come to touch that family life which is the very corner-stone of our social state, and, according to its moral condition, becomes the glory or the shame, the strength or the destruction of a people.

The noble Lord who moved the second reading sought to overbear us by the weight of precedent, and made many references to Germany, Canada, and the United States. It was a dangerous argument, and, well considered, does not assist my noble friend ; for, assuredly, authority is against him. The promoters of this Bill are encountered by the harmonious teaching of the Christian Church, and the unbroken tradition of the Christian people, since Christianity first rose into existence. I do not enter on the Scriptural dispute, or deal with the famous passages of Leviticus as establishing an irrefragable dogma. I look to the vital principle and sure foundation of Christian marriage, declared at the birthtime of the human race, and consecrated by the affirmation of the Redeemer, that the husband and wife are "one flesh," bound together in a perfect and holy union, and each absolutely belonging to the other, with a complete identity of love, hope, interest, and life. The great contemplative poet of our age has put it thus :—

" Wedded love with loyal Christians,  
 Lady, is a mystery rare ;  
 Body, heart, and mind in union,  
 Make one being of a pair !"

And from that old conception of the marital relations has always been deduced the inference, that the kinship of the wife should be held to be the kinship of the husband ; and that the wife's sister should not be the husband's wife.

This principle has, unquestionably, been maintained at all times since the earliest days of Christianity. It was proclaimed in the Apostolic Constitutions before the Nicene Council. It became a part of that great system of jurisprudence which was generated when the Christian Civilisation rose on the ruins of the effete and corrupt Imperialism of Rome ; basing the hope of the

world on the strictness and continency of the family relations, and raising up woman from her low estate, to soften and to purify the rude society around her. (Hear, hear.) The Theodosian Code condemned the practice which we are asked to approve, and declared marriage with a deceased wife's sister to be unlawful. And, thenceforth, for many a century, down even to our own time, the doctrine of that code has been held intact by famous Theologians, and solemn Councils. It was the doctrine of Basil, and Ambrose, and Augustine. It was the doctrine equally of the East and the West. It was affirmed by ecclesiastical assemblages in the various countries of Christendom, as they were successively comprehended within the fold of the Church; and it commanded the assent of all of them. The dispensing power claimed by the Popes was, at first, resisted and denied on the ground that the prohibition was absolute and mandatory by the law of God. And, when that power was at length established, it continued emphatically to witness the inherent impropriety of a practice which was permitted only in the most special circumstances, for the gravest causes, and to prevent worse results. So it remains at this hour; for although, in the Roman Catholic Church, dispensations are obtained, they are got with difficulty, and because of plainly coercive exigency. This Bill has nothing to do with marriages so allowed. It gives universal licence; and the memorial of the Catholic Clergy, to which reference has been made, praying only for the legalisation of such unions when authorised by special permission, in no degree involves the approval of its principle. The Greek Church, whatever may have been its decadence and shortcoming, is a venerable witness to the discipline of Christian antiquity; and in it marriages of this sort are deemed to be incestuous and incapable of being validated at all.

If we pass from ancient times, and come down to the Protestant Confessions of later days, we find that the unlawfulness of such a marriage was asserted equally by Lutherans and Calvinists, in Scotland, in Geneva, and in France; whilst in the Church of England it has been consistently proclaimed.

Then, the fact relied on by the advocates of the measure, that, on the Continent of Europe, such marriages are allowed in many



countries, comes rather in aid of the argument against them ; for in most of those cases they can be legalised only by special dispensation. The Commissioners who reported on the question in 1848 put the matter thus :—" Protestant States on the Continent of Europe, with the exception of some Cantons of Switzerland, permit these marriages to be solemnized by dispensation or licence, under ecclesiastical or civil authority." (Report, p. vi.) *Exceptio probat regulam*. The need of dispensation shows that the act is disapproved.

It may be otherwise in some parts of Germany and America, to which my noble friend so confidently referred ; but the result of the abrogation of the old Christian discipline there is surely such a state of things as should deter instead of attracting us, and furnish a solemn warning rather than an inducement to imitation. We cannot approve of indiscriminate connexions, lightly formed, and dissolved as lightly, on the first gust of temper, or the first assault of ungoverned passion, which it is a mockery to dignify by the sacred name of marriage.

Therefore, my Lords, on the issue of authority raised by my noble friend, we have the testimony of the Christian World from the earliest times against this innovation, and, for my own part, I should require the most potential reasons to overbear that testimony—

"Securus judicat orbis terrarum."

We are the "heirs of all the ages," and we should not lightly set aside the instruction which they give.

If you would maintain a Christian civilization in the world, hold high the ideal of the Christian marriage. Do not abase its dignity ;—do not dim its brightness. The time is not apt for meddling rudely with that great ideal, or, as you are asked to do to-night, with principles which are its bulwarks, and from which it derives its beauty and its strength. Old landmarks are vanishing away. Doctrines of international law and political justice, which long governed the public conscience of mankind, are losing their power. The elements of socialistic anarchy are working through the nations ; and we should beware of precipitating the time when laxness as to the marriage

bond may help to bring us to the condition of Rome, as described by Gibbon, "when marriages were without affection, and love was without delicacy or respect;" and when corruption, in that regard, was one of the worst instruments in the overthrow of the mightiest of empires.

But, my Lords, if all I have said were to be disregarded; if there were no tradition, or authority, or religious influence to warrant the rejection of this Bill; I should still oppose it in the interest of society, and for the maintenance of the dignity and purity of the family life. I should oppose it, because it is calculated to alter the relations of the sexes in a way most serious and most mischievous. The connection of the brother and the sister is delicate and tender, and so ought to be that of the brother-in-law and the sister-in-law—a connection of love and trust and mutual helpfulness, without the taint of passion or irregular desire. And thus it will continue, if you refuse to make legal marriage possible between them. Temptation is bred of opportunity, and dies when it is lost.

Give the prospect of the marital union which this measure would validate to a household now peaceful and harmonious, and are you sure that the husband will remain free from evil thoughts and wrongful aspirations, which he never before indulged? May not the dying wife find her long hours of pain made doubly miserable, when she feels herself tortured by jealous thoughts of the probable relations of her husband and her sister, commencing in her lifetime and in her presence, and to be consummated as soon as the grave has shut her from their sight? And for the maiden sister, would she not be precluded, in the circumstances this measure would create,—just in proportion to her delicacy and gentleness and modest fear of misconstruction—from entering a home where she would be a "ministering angel?" And if she should, notwithstanding, enter it—resolved to exhibit the unselfish devotion and heroic self-sacrifice which so ennoble the nature and the life of woman,—would there be no cause for fear lest she should sometimes be distracted by the bewildering and corrupting thought, that it might be her lot, by the licence of the law, to mount as a

nuptial couch the bed on which her sister, in her agony, had awaited dissolution?

I repeat, if there were no question of religious policy or authoritative teaching in the matter, for social reasons only we should be earnest in our resistance to this Bill. And why should we ignore the wisdom of the past and imperil the hopes of the future by adopting such a measure? Three reasons mainly seem to me to have been suggested in the course of this debate for the adoption of it.

It is said that we have no right to limit the freedom of action in matters like this, if not absolutely immoral and forbidden under any circumstances and with any sanction. But are those who argue so prepared to press their contention to its consequences? Will they do away with all prohibitions on the score of affinity, and deny to the State the right of imposing any? Will they refuse to the wife the privilege of marriage with the brother of her husband, whilst he obtains licence to marry with her sister? Will they tell those who urge that polygamy is lawful, and cite the authority of Milton to sustain their opinion, that the law must not interfere, and passion shall have its way? They cannot, and they will not. The Legislature must have power to regulate, more or less, the conduct of the people for their moral good.

Then, it is said that, because so many suffer from the present restriction upon marriage, it ought to be abrogated. A bold argument, involving an evil consequence,—if deliberate lawbreakers are to be encouraged to trample down the restraints to which they are bound to submit, succeeding all the more by reason of the audacity of their defiance of those restraints, and of the very flagrancy and frequency of their offences.

And, finally, it is said that this is a poor man's question. I doubt it much. I am assured by those who know England well that the persistent agitation of it, for so many years, has been maintained not by the poor but by the rich, who have an interest in it as leading to the condonation of their own illegality in the past, and not as securing a social improvement in the future. And I do not know that the poor man does not need to be guarded from doing what is evil,—dangerous to himself, and inju-

rious to his family,—as much as the rich. Nor do I believe that there is any necessity upon him to act against the policy of the law. In my own country, where such marriages are practically almost unknown, the poor feel no need of them, and no desire to enter into them.

And this observation brings me back to Ireland, which, I repeat, in my opinion, does not want this measure, and should not be forced to have it. We have been, so far, I thank God, saved from the infliction of a Divorce Court such as you have in England. I do not believe that any class or denomination of Irishmen desire such a law, with its long train of temptations, evil examples, and inevitable corruptions; and yet I fear that of it this Bill, if successful, would surely be the herald. In these matters we, Irishmen, desire to be let alone. We have had much to endure. We have had penury and persecution; we have been cursed by intestine dissension, and disgraced by social outrage; but, through all chance and change, we have preserved very rich possessions in the sacredness of the Irish hearth and the purity of Irish womanhood. And from these we shall not willingly be parted. Better times have come; material progress carries us onward; civil strife passes away; and equal laws establish the reign of justice. But we will not abandon, in our happier day, these precious things which we have inherited from the struggles of the past. I fear that measures such as this must bring them into peril, and, therefore, I oppose it.

I grieve that my conclusion is not in accordance with the views of most of those with whom it is my good fortune to act politically in this House; but I cannot falsify my own convictions, and I am coerced to vote against this Bill.







